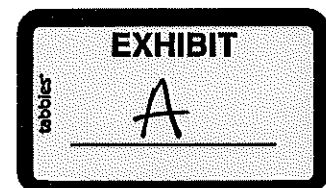


1           IN THE UNITED STATES DISTRICT COURT FOR THE  
2                   WESTERN DISTRICT OF MISSOURI  
3           RACHEL AUMICK, Individually        )  
4           and on behalf of the Heirs         )  
5           at Law of SHANE AUMICK,            )  
6           Deceased,                            )  
7   )  
8           Plaintiff,                            )  
9   )  
10          -vs-                                    )  
11   )  
12   )  
13          DOUGLAS COUNTY, MISSOURI,         )  
14          et al.,                                )  
15   )  
16          Defendants.                            )  
17  
18  
19  
20  
21  
22  
23  
24  
25

No.  
6:21-CV-03072-BP

14           VIDEORECORDED DEPOSITION OF KALEB BERKSHIRE  
15                   TAKEN ON BEHALF OF THE PLAINTIFF  
16                               OCTOBER 22, 2021



1     sorry.

2                   Q.     Do you know what city she lives in?

3                   A.     Sure. Mountain View. Sorry. I'm  
4     horrible with this.

5                   Q.     Any other family that may have the  
6     same last name, or may not have the same last name as  
7     you, that resides in the southern Missouri area?

8                   A.     Okay. So I have -- my youngest son,  
9     he's one, and he has the same last name, he's a  
10    Junior. And then my daughter Grace, she lives in  
11    Mountain View, she goes back and forth between her  
12    mom and I. My uncle Jim, he lives in West Plains, I  
13    think.

14                  Q.     Last name Berkshire?

15                  A.     Yes, ma'am.

16                  Q.     If at any time during the deposition,  
17    if you think of someone else, just let us know. What  
18    is your educational background?

19                  A.     High school and some college.

20                  Q.     Where did you graduate high school?

21                  A.     Willow Springs, Missouri.

22                  Q.     And where did you attend college?

23                  A.     It was APSU in Clarksville,  
24    Tennessee. I was in the military.

25                  Q.     Did you receive an associate's degree

1 or bachelor's degree?

2 A. I -- actually I didn't end up  
3 finishing because I went into a different avenue at  
4 the time. I was in the regular -- well, the regular  
5 Army and I decided to go into Special Operations  
6 instead of finish college.

7 Q. So explain to me Special Operations.  
8 Once you decided to leave college, where did you go  
9 or how did you train to become part of Special  
10 Operations?

11 A. It's a selection period. I was a  
12 Green Beret so you go and do a 24 day selection  
13 period. If you make it through the training then  
14 they'll tell you to come back. From that point you  
15 move to Fort Bragg, it's almost two years. It's  
16 pretty intensive with the language, a new MOS, or  
17 military occupation specialty, combined training, and  
18 jump school.

19 Q. And did all of that training occur at  
20 Fort Bragg?

21 A. Yes, ma'am.

22 Q. How long were you training at Fort  
23 Bragg, two years?

24 A. Yeah. It was approximately two  
25 years.

1 Q. When did you begin working with the  
2 City of Ava?

3 A. Well, according to this it says  
4 May 24th.

5 Q. What position or job title did you  
6 have with the City of Ava?

7 A. Patrolman.

8 Q. Was there any training that you had  
9 to undergo prior to your hire with the City of Ava?

10 A. Just the normal board -- just the  
11 normal sheriff's academy for the state and then the  
12 POST evaluation test.

13 Q. And what does POST stand for?

14 A. I knew you were going to ask me. I  
15 don't remember now off the top of my head.

16 Q. So you had sheriff's academy training  
17 and then POST?

18 A. Yeah. It's a POST exam. It's pretty  
19 much you go over -- it's a standardized test for  
20 anybody who wants to go into law enforcement to take.

21 Q. Did you have any on-the-job training  
22 when you were first hired with the City of Ava?

23 A. I had rode with Corporal  
24 Butterworth -- I was going to say his name -- several  
25 times prior to. But I don't -- I don't know that it

1 was ever an official OJT so to speak.

2 Q. Were there any trainings with regard  
3 to the rules and regulations or policies and  
4 procedures for the City of Ava Police Department that  
5 you had any specific training on?

6 A. No. Everyone, when you get hired  
7 you're given a standard operating procedure manual,  
8 book, and go through it.

9 Q. Did anyone in a supervisory capacity,  
10 either the Chief, Corporal Butterworth, or someone  
11 else, go through those general rules and regulations  
12 in the manual with you upon your hire with the City  
13 of Ava?

14 A. Corporal Butterworth gave them to me.  
15 I think we brushed over a few but not in depth.

16 Q. Do you recall, off the top of your  
17 head, which ones you brushed over?

18 A. I'm sorry, I don't.

19 Q. Did -- was there any kind of exam or  
20 any testing on those rules and regulations that you  
21 had to undergo with the City of Ava?

22 A. No, ma'am.

23 (WHEREIN, Exhibit 2 was marked for  
24 identification.)

25 BY: MS. ALLEN

1 Q. In between --

2 A. -- list.

3 Q. -- in time of the date of the  
4 application of April 16 of 2019 and your hire in May,  
5 did you have to undergo any training in preparation  
6 for your hire date with the City of Ava?

7 A. I honestly -- I don't remember. I  
8 don't remember right now.

9 (WHEREIN, Exhibit 3 was marked for  
10 identification.)

11 BY: MS. ALLEN

12 Q. I'm going to hand to you what I've  
13 marked for identification as Exhibit Number 3.

14 MS. ALLEN: And I apologize, I only have  
15 -- I'm not going to ask very many questions about it  
16 but I only have a copy --

17 MR. HYDE: Oh, no. That's fine. I don't  
18 need one.

19 BY: MS. ALLEN

20 Q. That has been produced to us by the  
21 City of Ava as documents that encompass your training  
22 while employed there. And take a look, flip through  
23 there and let me know if there's anything that you  
24 see missing or something that should have been  
25 included that may not be there.

1 A. Okay.

2 Q. I just want to make sure that we've  
3 got --

4 A. That's actually everything.

5 Q. We've got what we got, yes.

6 A. Okay.

7 Q. Just let me know when you're finished  
8 with that.

9 A. Uh-huh. There should be a  
10 certification for Narcan to -- the city, we did a  
11 class on it to be able to carry it in case we dealt  
12 with an overdose. And then I didn't see the normal  
13 annual qualifications with handgun and rifle and  
14 whatnot.

15 Q. Okay. Thank you. When did you leave  
16 the Ava Police Department? And if you need to  
17 refresh your recollection, I know we've got your time  
18 sheets --

19 A. It's on this, yeah.

20 Q. -- as Exhibit Number 1.

21 A. Yeah. June 22nd was my last day  
22 worked.

23 Q. Of 2020?

24 A. Oh. Yes, sorry.

25 Q. So you were with Ava for just over a

1     **year?**

2                   A.     Yes.

3                   **Q.     Why did you leave the Ava Police**  
4     **Department?**

5                   A.     I left the Ava Police Department  
6     because the -- we worked eight hour shifts there, the  
7     current department I work we work 12 hour shifts. So  
8     I get to see my family with the different shifts. As  
9     it was working eight hour shifts I had Tuesdays and  
10    Wednesdays off and that's not very adherent to family  
11    life. So I didn't get to see, you know, any of the  
12    stuff on weekends or whatnot. That's why I left.

13                  **Q.     With regard to your employment at**  
14    **City of Ava, did you have any write-ups or**  
15    **disciplinary actions against you during your employ?**

16                  A.     No, ma'am.

17                  **Q.     Where are you currently employed?**

18                  A.     City of Licking.

19                  **Q.     How long have you been employed by**  
20    **the City of Licking?**

21                  A.     Pretty much right after Ava. I would  
22    have to get -- I can get you the exact date if you'd  
23    like.

24                  **Q.     Did you have your job lined up with**  
25    **the City of Licking when you left Ava?**



1 on another arrestee?

2 A. Not that I remember. There was other  
3 arrests where they resisted but whereas Mr. Aumick  
4 continued to resist and fight the entire time the  
5 other suspects stopped and then we were able to get  
6 them in the -- either into the back of the vehicle or  
7 transport them.

8 Q. Do you recall how long you held those  
9 other individuals in the restraint -- that same type  
10 of restraint versus Mr. Aumick?

11 A. Same type of restraint? I guess --

12 MR. BERTELS: I'm going to object as vague  
13 as what you mean by other type of restraint. You can  
14 answer, if you understand.

15 THE WITNESS: Yeah. I don't understand.  
16 Just -- I guess what are you --

17 BY: MS. ALLEN

18 Q. You mentioned that you restrained Mr.  
19 Aumick --

20 A. Yes, ma'am.

21 Q. -- as well and used that same  
22 restraint on three or four other individuals while  
23 employed with the City of Licking, correct?

24 A. I don't know the exact number. But  
25 yes, I've used the technique prior, if that's what

1     you're asking.

2                   Q.     Where did you -- where did you learn  
3     to use that type of technique?

4                   A.     Would have been the sheriff's  
5     academy.

6                   Q.     What year in the sheriff's academy  
7     did you learn to use that type of restraint?

8                   A.     2019 or -- '19 to '20 was our  
9     academy, I think, wasn't it? '19. I'd have to look.

10                  Q.     2019?

11                  A.     So it would have been -- yeah, 2019.

12                  Q.     Do you recall the instructor's name  
13     who taught you how to perform that restraint?

14                  A.     It would have been Mrs. Price.  
15     Price.

16                  Q.     Do you know where Price is out of,  
17     what city?

18                  A.     I believe she's a juvenile officer  
19     but she still works for the Missouri Sheriff's  
20     Academy.

21                  Q.     Do you recall what juvenile office  
22     that she's out of in the State of Missouri?

23                  A.     I don't. I want to say it's out  
24     towards Van Buren. But again, I'm not a hundred  
25     percent on what office she's out of.

1 Q. Pardon me. And then above him was  
2 Chief Johnson, correct?

3 A. Yes, ma'am.

4 Q. During that shift, you were  
5 dispatched to an incident involving Shane Aumick,  
6 correct?

7 A. Yes, ma'am.

8 Q. Were you familiar with Shane Aumick  
9 prior to being dispatched on April 4, 2020?

10 A. No, ma'am.

11 Q. Were you familiar with any of the  
12 Aumick family there in Ava prior to being dispatched  
13 on April 4 of 2020?

14 A. No, ma'am.

15 Q. Were you -- strike that. Do you have  
16 any independent recollection of that particular call  
17 involving Shane Aumick?

18 A. I guess -- can you clarify what you  
19 mean?

20 Q. Meaning, without looking at any  
21 documents or video footage, do you have any  
22 independent recollection or memory of your  
23 interaction in the incident involving Shane Aumick  
24 that night? Or morning, excuse me.

25 A. That morning. I just remember when I

1 any massive objections, no.

2 Q. Prior to your shift in which you  
3 encountered Shane Aumick, did you determine whether  
4 or not your body cam equipment was working  
5 satisfactorily?

6 A. I believe I had other calls that  
7 night. Again, I'd have to look. I didn't know of  
8 any issues, no, ma'am.

9 Q. Prior to your shift where you  
10 encountered Shane Aumick, if you had any problems  
11 with the body cams pursuant to the policy you would  
12 have brought that to the attention of your immediate  
13 supervisor, correct?

14 A. Yes, ma'am. I would have let the  
15 corporal know. And then the policy was usually you  
16 turn it in and then switch out for a camera that's in  
17 the base station.

18 Q. Did you, during your shift in which  
19 you encountered Shane Aumick, manually deactivate  
20 your body cam?

21 A. No, ma'am.

22 Q. During your shift in which you  
23 encountered Shane Aumick, did you manually activate?

24 A. Yes, ma'am.

25 Q. Why did you do that?

1           A.     Because as you get out of the vehicle  
2 we have -- the camera doesn't just come on itself,  
3 you have to activate it. And like I had said earlier  
4 when I stepped out of the vehicle, when I was getting  
5 out, I thought I had turned it on, I pressed the  
6 button and I was under the assumption that it was on.  
7 And again, it wasn't until I was calling Shane back  
8 out that I glanced down and seen the wrong color  
9 light on and that's when I made sure that it came on.

10           Q.     Are you aware of any circumstances in  
11 which the body cam will automatically activate?

12           A.     Not that I know of.

13           Q.     Would you agree with me that Ava  
14 Police Department adopted this policy for use of the  
15 body cam in order to accurately document events,  
16 actions, conditions, and statements made during  
17 arrests?

18           A.     Yes, ma'am.

19           Q.     Would you agree with me that the Ava  
20 Police Department states in this policy that its  
21 officers shall follow the procedures for the body cam  
22 equipment use as set forth in the policy?

23           A.     Yes, ma'am. From everything that I'm  
24 reading it -- yes.

25           Q.     Officer, we have been going for about

1 dispatcher told me when I was being dispatched to the  
2 residence?

3 Q. What I'm asking you -- my  
4 understanding is the officer ID, Officer Kaleb  
5 Berkshire, 424, --

6 A. Uh-huh.

7 Q. -- is this an incident report that  
8 you prepared?

9 A. Yes, ma'am.

10 Q. Okay. Why did you denote, up here at  
11 the very top where it says crime, slash, incident  
12 looks like an ordinance number and then it states  
13 domestic assault. What was the reasoning for you  
14 putting that there?

15 A. Because when we were -- when I was  
16 dispatched to the residence it was called in that Mr.  
17 Aumick was assaulting a family member, which would be  
18 the domestic assault.

19 Q. Do you recall, as you sit here today,  
20 which family member Mr. Aumick was allegedly  
21 assaulting?

22 A. I believe -- I believe it was his  
23 mother off the top of my head but I am not positive  
24 on the call.

25 Q. Would that have been Mary Aumick?

1 other?

2 A. Yes, ma'am.

3 Q. Who is Coby Roberts?

4 A. He would be the deputy from Douglas  
5 County Sheriff's Office.

6 Q. And the last individual listed is  
7 Steven J. Wood?

8 A. Yes, ma'am.

9 Q. And that is the gentleman employed by  
10 Cox who provided the voluntary statement included in  
11 your incident report, correct?

12 A. Yes, ma'am. He was also the  
13 paramedic on scene.

14 Q. If we move to Page 3 of your incident  
15 report, it begins that on April 4 of 2020 at  
16 approximately 0614 you received a report from  
17 dispatch there was a domestic in progress at 507  
18 Pennington Avenue. The report -- the RP, reporting  
19 party, stated the male was tearing the house apart  
20 and that they needed an officer immediately. Is that  
21 correct?

22 A. Yes, ma'am.

23 Q. You state that your arrival time was  
24 approximately 0616; is that correct?

25 A. Yes.

1 Q. And you found Ms. Aumick covered in  
2 blood you state, correct?

3 A. Yes, ma'am.

4 Q. What area of her body was covered in  
5 blood?

6 A. Her arms, blouse.

7 Q. You note that there was an elderly  
8 male there who stated his stepson was inside with a  
9 knife and tried to kill them and was rampaging in the  
10 house, correct?

11 A. I stated that, yes, Mr. Thomas had  
12 blood on his hands and shirt.

13 Q. What did you state after that?

14 A. The elderly male stated that his  
15 stepson was inside with a knife and tried to kill him  
16 and was rampaging in the house.

17 Q. Are you still referring to Houston  
18 Thomas in making that statement?

19 A. I believe so. That's the stepdad.

20 Q. And then in reference to the stepson,  
21 are you referring to Shane Aumick?

22 A. Yes.

23 Q. The next line states that his stepson  
24 was intoxicated and not in his right frame of mind,  
25 correct?



1 knife, correct?

2 A. Yes. To the left, yes.

3 Q. Then you radioed dispatch but  
4 dispatch did not hear your initial radio contact is  
5 what you've got written there, correct?

6 A. Yes.

7 Q. And at this point the suspect was  
8 coming toward you brandishing the knife again in his  
9 hand, is that --

10 A. It was all in one motion, ma'am. As  
11 he's coming down I -- sorry. I -- our radios are set  
12 up to where I can use one hand to talk on the radio  
13 and the other one -- that's why our service pistols  
14 have lights on them.

15 Q. At this point you stated one more  
16 time that he needed to place the weapon on the ground  
17 or you would have to hurt him and didn't want to.  
18 Shane Aumick stepped quickly toward me and swung the  
19 knife toward me but you leaned back as the blade --

20 A. Yes.

21 Q. -- came toward your face?

22 A. Yes.

23 Q. So is that the same incident you're  
24 talking about or are these two separate ones?

25 A. It's all the same incident, ma'am,

1 it's all...

2 Q. The knife missed, leaving the suspect  
3 off balance as he tried to swing the blade back  
4 toward me?

5 A. Uh-huh.

6 Q. I was able to catch the suspect's arm  
7 and twist the wrist to loosen the blade in his hand.  
8 I was then able to disarm the knife from his left  
9 hand throwing the blade into the grass. Shane Aumick  
10 was able to dislodge his arm from my grasp and ran  
11 back into the porch and into the residence, correct?

12 A. Yes, ma'am.

13 Q. With regard to this opening paragraph  
14 of your narrative, is there anything that you would  
15 like to amend or correct?

16 A. I don't know. Not that I can think  
17 of. Not right now. I don't know.

18 Q. If you think of something as we go  
19 through this, please let me know so that we can go  
20 back and clarify it.

21 You then approached the residence  
22 instructing Mr. Aumick to come out with his hands  
23 where you could see them?

24 A. Yes.

25 Q. You drew your pistol with the light

1 on sweeping the porch with my weapon and flashlight  
2 in my left hand?

3 A. Yeah.

4 Q. Were your weapon and your flashlight  
5 in your left hand?

6 A. So it was at this point that I had  
7 pulled the other -- so I had a cross grip. So I had  
8 a smaller -- I wish I had it on me. It's a smaller  
9 flashlight in my left hand and then the other -- the  
10 pistol was in my right hand in a braced position.  
11 And I was calling him out.

12 Q. Was this the second time that you  
13 brandished your weapon --

14 A. Yes, ma'am.

15 Q. -- with regard to Mr. Aumick? Then  
16 you move onto the porch with your weapon raised. You  
17 were in defensive posture, ready to use deadly force  
18 if necessary; is that correct?

19 A. Yes.

20 Q. Can you demonstrate for me what that  
21 posture, what that looked like, your defensive  
22 posture, ready to use deadly force if necessary on  
23 the porch that morning?

24 A. Yes, ma'am. So it was at the point I  
25 was getting ready -- coming up the steps. So there

1 was -- do you want me to stand up?

2 Q. That's fine. Go ahead, yeah.

3 A. Okay.

4 Q. If that's easier.

5 A. So he may stand up with me. So as I  
6 was coming up the steps I was squatted anyway 'cause  
7 you take your -- the weight up off your -- so I was  
8 squatted like this and I had the pistol in my right  
9 hand and the flashlight right here. And as I was  
10 coming up I was coming up the steps and trying to see  
11 through -- again, the whole front part of the house  
12 was covered with blood and then the front door had  
13 two or three big huge swipes of blood across it.

14 So I was -- as I was calling out to him  
15 again I was trying to deescalate everything and I'm  
16 saying in essence, hey, man, just -- I need you to  
17 come out, you're not -- you're not -- you're not  
18 necessarily getting arrested. I need you to put  
19 these -- you need to put these cuffs on for your  
20 protection, for mine. Trying to get the lowest level  
21 to calm him down because everything had just gone to,  
22 like, 100. And trying to get everything back down to  
23 him calm to where I felt that I could get control of  
24 the situation.

25 And as I was calling him out it was during

1 this time that I glanced down and I noticed that my  
2 camera hadn't turned on so I ensured that the camera  
3 turned on.

4 And as I'm calling him out then, I mean,  
5 you can see from that point forward I was trying to  
6 talk to him in nice, calm, reassuring tones. I was  
7 trying to calm him back down. He did finally come  
8 towards me and I had him turn around, put his hands  
9 on -- I believe it was on the back of his head. I  
10 got him in cuffs, locked him in cuffs. And I believe  
11 it was at that point that I moved him over to the  
12 side of the porch steps and sat him down with his --  
13 excuse me, his feet crossed so he couldn't ambulate,  
14 like take off sprinting on me, it would take him a  
15 second to stand up.

16 Q. Understanding that you had been told  
17 Mr. Aumick was intoxicated, did he, or was he steady  
18 on his feet, based upon your observations?

19 A. I didn't smell any intoxicants. When  
20 he was moving he -- he did not appear to have the  
21 sway of some individuals, when they're intoxicated  
22 they'll kind of sway in a circle. To me it did not  
23 appear that way.

24 Q. When you turned on your body cam,  
25 where were you located?

1 (Video was played.)

2 BY: MS. ALLEN

3 Q. So at approximately 6:16 and  
4 approximately 42 seconds you report that you had the  
5 scene secured, correct?

6 A. Yes. To try and get the ambulance en  
7 route. And you also have to realize a scene can go  
8 from being secure to uncooperative in -- they can  
9 fight at any moment. But yes, at this point right  
10 now I called in that he was secured.

11 Q. Okay. And by secured, what did you  
12 mean?

13 A. That he wasn't fighting at this point  
14 in time. That I had him cuffed and sat down then I  
15 wanted med as soon as possible.

16 (Video was played.)

17 BY: MS. ALLEN

18 Q. Okay. So at approximately 6:17 and  
19 9 seconds you approach Mary Aumick and state you're  
20 going to check on your mom to Mr. Aumick, correct?

21 A. Yeah.

22 (Video was played.)

23 BY: MS. ALLEN

24 Q. At that point you asked, he had a  
25 knife?

1 (Video was played.)

2 BY: MS. ALLEN

3 Q. At this point, why didn't you move  
4 Mr. Aumick into your patrol car?

5 A. Because I was waiting for the  
6 ambulance to get here. I was waiting for -- my logic  
7 was that the -- it would be easier for me to control  
8 where he was at as soon as the paramedics got there.

9 Q. What do you mean it would be easier  
10 for you to control where he was at when the  
11 paramedics got there?

12 A. If he starts kicking and resisting in  
13 the back of the vehicle, or actually the front seat  
14 of the vehicle, it's -- it gets almost impossible to  
15 get them out without injuring myself, injuring Mr.  
16 Aumick, injuring the paramedic. Whereas there was no  
17 injury to -- risk of him if he would just sit there,  
18 so...

19 (Video was played.)

20 BY: MS. ALLEN

21 Q. Is this your police --

22 A. Yes, ma'am.

23 Q. -- vehicle you're approaching?

24 A. Yes. Because it was dark I was  
25 trying to turn the lights so that I -- the front

1 headlights would light up the whole front yard. That  
2 was all.

3 (Video was played.)

4 BY: MS. ALLEN

5 Q. When you're directing Mr. Aumick to  
6 stop, what are you meaning by stop? He was  
7 handcuffed, sitting on the porch steps, correct?

8 A. Yes, ma'am. He was also yelling and  
9 -- I don't think you can quite see it. But he would  
10 kick at my legs and feet every time that I would even  
11 be remotely by him.

12 (Video was played.)

13 THE WITNESS: He just threatened to start  
14 shooting again.

15 BY: MS. ALLEN

16 Q. Did you have any concern of him  
17 shooting you at that point while he was handcuffed,  
18 sir?

19 A. My concern was that he never stopped  
20 and complied, he was still very argumentative, very  
21 noncompliant with everything I said. So yes, I was  
22 concerned that at a different point in time that he  
23 may try and escalate again.

24 (Video was played.)

25 BY: MS. ALLEN



1 Q. Are you doing anything at this point  
2 to restrain Mr. Aumick?

3 A. Yes. I had him cross his legs and  
4 then they were bent back up against his butt and I  
5 had my knee leaned into the back part of his crossed  
6 legs.

7 Q. If we look at your report on Page 4,  
8 your narrative.

9 A. Page 4?

10 Q. Yes. It says page at the top.

11 A. I gotcha. Okay.

12 Q. Okay. A few lines up from the last  
13 paragraph you state, I instructed Shane to cross his  
14 feet and place them against his backside?

15 A. Uh-huh.

16 Q. Did -- is that a yes?

17 A. Yes.

18 Q. Did he do that?

19 A. Yes.

20 Q. I was able to catch his foot and make  
21 him comply. Even with the leg -- suspect's legs  
22 crossed and my weight on his crossed legs he was able  
23 to buck his body up and move his legs trying to kick  
24 me.

25 A. Yes.

1 Q. Did that happen?

2 A. Yes.

3 Q. It was at that point I moved into a  
4 side control position, placing my right knee into the  
5 middle of his back between his hip to control his  
6 lower body. Did you, in fact, do that?

7 A. I'm trying to catch up to where  
8 you're at, I'm sorry. Okay. It was at this point --  
9 crossed -- yes. If you continue to watch the video,  
10 he continues to kick and buck. The side control that  
11 I am -- did you --

12 Q. Right. I was asking. You then  
13 state, I moved into a side control position.

14 A. Yes. Standing at his side with my --

15 Q. Placing my right knee into the middle  
16 of his back between his hips to control his lower  
17 body. Did you do that?

18 A. Yeah. Momentarily on the -- it  
19 wasn't really on so much of his back but into the  
20 lower portion of his, I guess, butt crack. And then  
21 when I'm saying that -- wait. While placing my left  
22 knee --

23 Q. Up onto --

24 A. -- up onto -- into the pocket by his  
25 head so that I could maintain and try and use pain

1 compliance with his arms in the cuffs. But as you  
2 watch the video he continues to fight and kick and  
3 buck and he never complies. And so that was when --  
4 when that didn't work that's when I moved off to the  
5 side.

6 Q. I'm sorry. You moved off to the side  
7 where?

8 A. Of his person. I moved onto -- I'd  
9 have to show you on the video. It would be easier to  
10 explain on the video.

11 Q. And I just want to ask you. Did you  
12 have your right knee in the middle of his back, as  
13 you write here, and your left knee up onto his lower  
14 cranium to control his upper body?

15 A. No, not in the way that you're  
16 describing it. I had my knee --

17 Q. Sir, I'm using your words and your  
18 report. So I'm not describing or -- anything but --  
19 other than what you've written here, sir.

20 MR. BERTELS: Objection, argumentative.  
21 Move to strike.

22 BY: MS. ALLEN

23 Q. I'm asking did you or did you not do  
24 as you've written here in your report marked for  
25 identification as Exhibit Number 7?

1           A.    I placed my right knee down on -- it  
2    would be on his -- by his -- for lack of better term,  
3    his butt crack. And then the other one was not on  
4    his neck or head, it was in the side, it was off to  
5    the side. So I guess -- I apologize for not making a  
6    clearer picture. However, my knee was not on his  
7    head or neck, it was to the side of it to allow me to  
8    move my one arm up underneath and attempt to get  
9    compliance with his arms, raising his shoulders and  
10   arms in an elevated position to try and attempt to  
11   get pain compliance which at no point he did. It  
12   was...

13           Q.    Let's look at this a little bit.  
14                (Video was played.)

15           BY:   MS. ALLEN

16           Q.    Who are you speaking to at this  
17   point, sir?

18           A.    It would be a paramedic.

19           Q.    And is that the paramedic Steve Wood?

20           A.    I'm not sure. I couldn't see the  
21   name tape on it. It's one of the two.

22           Q.    Mr. Wood prepared a voluntary  
23   statement --

24           A.    Uh-huh.

25           Q.    -- for the Ava Police Department

1 Q. Paramedic.

2 A. Yes.

3 Q. Okay. Do you have any reason to  
4 dispute the statement that Mr. Wood provided to the  
5 Ava Police Department? Sorry, I think I hit play  
6 before you answered the question.

7 A. No.

8 (Video was played.)

9 BY: MS. ALLEN

10 Q. At that point you state you'll get  
11 off his back when he stops. Is that the position you  
12 recall being in at that point in time?

13 A. To clarify, I said back but I was on  
14 his butt.

15 (Video was played.)

16 THE WITNESS: Now I'm standing.

17 BY: MS. ALLEN

18 Q. What position are you in now, Officer  
19 Berkshire, to your recollection, with regard to Mr.  
20 Aumick's body?

21 A. Leaning over him on the -- just prior  
22 to this -- prior to you stopping it I was actually  
23 off to the back -- my knee was down on the ground  
24 trying to hold one arm up and place it on the  
25 forearm.

1 Q. And how do you recall that as you sit  
2 here today?

3 A. Because that's the position that I  
4 tried to stay in off to the side so that I wouldn't  
5 be on his back or in the middle of it or anything  
6 else to control him, especially when he's in cuffs.  
7 If you can control their hips and that arm and  
8 shoulder you control them.

9 Q. Where did you write this in your  
10 report, that you had changed positions?

11 A. I guess I didn't specify. I thought  
12 it was clear in the video.

13 Q. We can't see your position in the  
14 video, would you agree with me?

15 A. No, I don't agree with you. Because  
16 there's several times that you can see throughout the  
17 video that I'll be either off to the side or standing  
18 up a large portion and leaning over him.

19 (WHEREIN, Exhibit 9 was marked for  
20 identification.)

21 (Video was played.)

22 BY: MS. ALLEN

23 Q. I'm going to hand to you what I  
24 marked for identification as Exhibit 9, sir. Are you  
25 familiar with this policy and procedure of the City

1 the side or not, sir. Is this your shadow that we're  
2 seeing here?

3 A. My shadow's right here.

4 Q. When you state, she was outside, he  
5 was inside, I had to go back and bring her back in,  
6 what was that in response to?

7 A. I don't know at this time.

8 Q. Was that a question Mr. Wood asked  
9 you?

10 A. I don't know.

11 Q. The paramedic?

12 A. I don't know who or what the question  
13 was in reference to at this point.

14 (Video was played.)

15 BY: MS. ALLEN

16 Q. Would you agree with me, sir, that  
17 Mr. Aumick asked you to get off?

18 A. Yes, that's what he stated.

19 Q. What were you on?

20 A. I was off to the side. I was  
21 controlling his shoulders.

22 Q. Where is that written in your report  
23 that you were off to the side controlling Mr.  
24 Aumick's shoulders?

25 A. It's not -- I don't believe it -- I

1     stated that -- that was part of the side control.  
2     But you're also not noting that he continues to  
3     threaten and kick and tell -- he continues to  
4     threaten myself and the paramedic and continues to  
5     fight the entire time.

6                   **Q.     Right. But you declined to tase him,**  
7     **correct?**

8                   A.     Ma'am, I was trying to use the least  
9     possible force. I think you would probably -- I  
10    think you would be just as upset if I did tase him  
11    then we'd be having a completely different  
12    conversation.

13                   **Q.     Yes. And Mr. Aumick may be alive**  
14    **today, correct?**

15                   MR. BERTELS: Objection, calls for  
16    speculation, lacks -- if you know, you can answer.  
17    Asks for a medical testimony too, calls for expert  
18    testimony. You can answer, if you know.

19                   BY: MS. ALLEN

20                   **Q.     You mentioned that you were in the**  
21    **side position and had Mr. Aumick by his shoulders?**

22                   A.     Uh-huh.

23                   **Q.     I'm asking you, where in your report**  
24    **did you document that?**

25                   A.     It's right here where I say it was at



1 this point I moved between --

2 Q. Which page are you on, sir?

3 A. It's on Page 4, ma'am.

4 Q. Okay.

5 A. I repeatedly instructed the suspect  
6 to stop, to stop resisting. I instructed -- chains  
7 across his feet, placed him against his backside. I  
8 was able to catch his foot. This is as we were  
9 talking earlier, and proceeded to continue through.  
10 Even with the suspect's legs crossed and my weight  
11 across his legs he was able to buck up and -- buck up  
12 and move his legs trying to kick at -- to kick me.  
13 It was at this point I moved into a side control  
14 position, the side control position with my right  
15 knee up in the middle of his butt -- or I said back  
16 here but it's into his butt, on the side.

17 I guess the side control position, I'm  
18 assuming that the reader knows body control and  
19 Jujitsu. Jujitsu side control you control from the  
20 side, you're not putting your knees into him. It's a  
21 side position to control the knee -- excuse me, the  
22 hips and then the upper torso, the head. That's why  
23 I was controlling -- taking control of -- had my one  
24 knee on the side and then the other side and then  
25 trying to control his shoulders.

1 Q. I'm going to hand you what I've  
2 marked for identification as Exhibit 10. Are you  
3 familiar with the City of Ava's response to  
4 resistance policy?

5 A. I knew it better at one point. I  
6 would have to read it now.

7 Q. Were you thoroughly trained in its  
8 contents?

9 A. Yes. When we were hired we went over  
10 the uses of force and when that is necessary.

11 Q. On Page 2 there is a reference,  
12 Paragraph G, to excited delirium is a state of  
13 extreme mental and physiological excitement  
14 characterized by extreme agitation, hypothermia,  
15 hostility, exceptional strength and endurance without  
16 apparent fatigue. What thorough training did you  
17 receive regarding excited delirium pursuant to the  
18 City of Ava policy?

19 A. I don't remember any training on the  
20 excited delirium.

21 Q. Okay. If we move to -- and you'll  
22 see a note down here where it has a Bates stamp, as  
23 we call it, Ava 65.

24 A. Okay.

25 Q. That relates to the use of taser, --

1           A.     Just from the -- through the  
2     sheriff's academy they taught PPCT, which is in the  
3     -- in accordance with the same restraints.

4           Q.     If you flip to Page Ava 72 under  
5     training, officer shall receive in-service training  
6     on an annual basis regarding defensive tactics and  
7     the use of physical force and control holds. Did I  
8     read that correctly?

9           A.     Yes, ma'am.

10          Q.     Did you receive training on defensive  
11     tactics and the use of physical force and control  
12     holds?

13          A.     Not while I was there, no.

14          Q.     It further states, this training will  
15     be consistent with current legal trends and generally  
16     accepted law enforcement procedures.

17          A.     Okay.

18          Q.     You did not receive any training with  
19     the City of Ava in regard to the use of physical  
20     force and control holds; is that your testimony?

21          A.     My testimony is that I received it  
22     while during the academy. The -- according to state  
23     law it's -- with POST you have a year that that  
24     training's good. So by the next year, that next  
25     annual date you have to have that training again.